Supreme Court, U.S.
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No. 79-1934
IN THE

Supreme Court of the United States

October Term, 1979

FLOYD H. DANIELS,

Petitioner,

vs.

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, a public corporation; and JACK R. GILSTRAP, as General Manager of the SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Memorandum of Respondents' Opposing Certiorari.

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To the Supreme Court of the United States:

The Southern California Rapid Transit District ("District") and Jack R. Gilstrap, Respondents, respectfully submit the following Memorandum Opposing Certiorari:

This Petition for a Writ of Certiorari involves the third of three lawsuits Petitioner has filed against Respondents. Each sought relief for the same alleged wrongful discharge from District employment, and judgment was entered against the Petitioner in each.

On November 17, 1971, Petitioner filed a Petition for Writ of Mandate in the Superior Court for the State of California. (Exhibit A, at pp. 13-17.)[1] He prayed for reinstatement as an operator (bus driver) for the District and for monies lost as a result of his alleged wrongful discharge from employment with the District. In an unpublished opinion filed on February 28, 1974, the California Court of Appeal affirmed the Superior Court's judgment against Petitioner. (Exhibit A, at pp. 94-102.) On April 24, 1974, the California Supreme Court denied a hearing in the case. (Exhibit A, at p. 104.)

Petitioner next filed a "Complaint for Discriminatory Breach of Contract for Damages" in the United States District Court for the Central District of California on January 28, 1975. (Exhibit A, at p. 106.) This complaint sought damages pursuant to 42 U.S.C. §§ 1981 and 1983 against Respondents for the same alleged wrongful discharge from District employment. In a memorandum opinion, the United States Court of Appeals for the Ninth Circuit affirmed the District Court's judgment against Petitioner. 547 F.2d 1174 (9th Cir. 1976). (Exhibit B.) On June 13, 1977, the United States Supreme Court denied Petitioner's Petition for a Writ of Certiorari in the case. 431 U.S. 967 (1977). (Exhibit D.)

Finally, on November 2, 1977, Petitioner filed the complaint underlying the current Petition for a Writ of Certiorari. (C.T. 1.) By this third complaint, Petitioner again sought reinstatement and damages for an alleged wrongful discharge from District employment in 1970. Like the previous

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[1]References to the Record of the Court of Appeals shall be made as follows: "C.T." shall designate the Clerk's Transcript; Respondents' Motion to Dismiss the Petitioner's November 2, 1977, Complaint shall be designated "Motion to Dismiss" (in brown envelope for the Ninth Circuit use only), and all "Exhibit" references refer to Exhibits thereto.

References to Petitioner's Appendix shall be designated "App.", and to Supplementary Appendix "Supp. App."

federal action, this complaint was also premised on 42 U.S.C. §§ 1981 and 1983. On February 7, 1978, the District Court ruled that the doctrine of *res judicata* barred this latest action. (C.T. 100-01.) On or about March 12, 1980, the United States Court of Appeals for the Ninth Circuit, by Memorandum, affirmed the decision of the District Court in this matter. (App. 41-44; Supp. App. 3-6.) Petitioner thereafter filed a Petition for Rehearing, which the Court of Appeals denied on or about April 21, 1980. (App. 40; Supp. App. 2.) On May 19, 1980, the judgment on appeal was filed and spread in the District Court. Thereafter, on or about June 9, 1980, Petitioner filed the within Petition for a Writ of Certiorari in this Court.

The Petitioner's current Petition for a Writ of Certiorari is his second on the identical set of facts. As the Court of Appeals properly determined,

> "Daniels sought the same kind of relief in each action he filed. All of them arose out of the same set of facts culminating in the termination of his employment by the Transit District in 1970.
>
> . . . .
>
> Where a claim is based on the same asserted wrong that was the subject of a prior action, and where the parties are the same, res judicata will bar the subsequent action because a prior judgment on the merits will not only bar every claim that was raised in the prior action but will also preclude every other legal theory or ground for recovery that might have been asserted. *See Scoggin v. Schrunk*, 552 F.2d 436 (9th Cir. 1975), *cert. denied*, 423 U.S. 1066 (1976).
>
> There is no merit in Daniels' attempt to overcome the running of the statute of limitations by asserting that the Transit District's refusal to meet his 1977 demand for unconditional reinstatement constitutes grounds

for a new claim." (App. 43; Supp. App. 5-6.) (Typographical errors which appear in the Supplemental Appendix filed by Petitioner have been corrected.)

THEREFORE, inasmuch as this second Petition for a Writ of Certiorari concerns "the same set of facts" which has consistently resulted in judgments adverse to Petitioner, the special and important reasons required by Rule 17 of the *Rules of the Supreme Court of the United States* for review on certiorari have not been demonstrated. Respondents respectfully request that the Petition be denied.

Respectfully submitted,

STEVEN D. WEINSTEIN,
Attorney for Respondents.

MUSICK, PEELER & GARRETT,
DWIGHT L. ARMSTRONG,
Of Counsel.